

December 14, 1999

The Honorable Tom Bliley  
Chairman  
Committee on Commerce  
U.S. House of Representatives  
2125 Rayburn House Office Building  
Washington, DC 20515-6115

Dear Mr. Chairman:

The Coalition of Northeastern Governors (CONEG) commends you for addressing the important issue of electric utility restructuring. The Northeast is in the forefront of state efforts to restructure the nation's electric utility industry. The region's rapid progress toward competitive electricity markets offers a prism through which to consider the relationship of state and federal roles in this changing industry. Any federal legislation to address competition in the electric industry must support and enhance — not impede or reverse — the progress of the states in creating competitive energy markets. As the Committee considers this legislation, we would like to share with you some of our concerns.

The reliability of the nation's electric system has always been, and remains, of the utmost importance to the CONEG Governors. In a restructured market, an independent electric reliability organization is needed to develop and enforce mandatory national reliability rules. The states are in the best position to use their knowledge of local or regional reliability concerns to determine the need for additional measures. A vital component in any federal legislation is the inclusion of a "savings clause" to preserve the states' authority to set additional reliability standards appropriate to their bulk power system. Each state must retain the authority to set more stringent standards if doing so is in the best interest of its citizens.

Identifying and mitigating market power abuses is an important element for the emergence of fair and equitable competitive markets. States must retain authority over market power and must have a role in the review and approval of mergers.

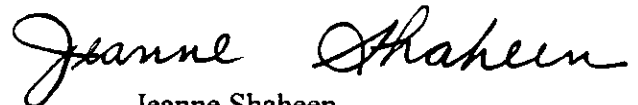
Clarification of states' authority to establish a renewable portfolio standard is an essential element of federal legislation. The Northeast states' restructuring programs incorporate a variety of public benefits programs and funding approaches — each appropriate to a state's particular situation and policy objectives. Any federal legislation must reaffirm, protect and respect the states' authority to provide the particular package of public benefits programs that it determines appropriate. In addition, legislation must clarify that states have jurisdiction over all aspects of net metering programs, including their design and type of equipment used.

The Honorable Tom Bliley  
December 14, 1999  
page 2

The adoption of equitable and comparable environmental emissions provisions applied evenhandedly to all market participants nationwide is an important foundation for effective and successful competition in electric markets. The development of a market-based emissions trading or "cap-and-trade" system for utilities will allow industries greater flexibility in choosing appropriate and cost effective pollution control measures. Federal restructuring legislation should provide EPA with clear legal authority to require such an interstate trading system for NO<sub>x</sub>.

Again, the Governors thank you for your attention to this important issue. We stand ready to work with you as this legislation moves through Congress.

Sincerely,

A handwritten signature in black ink, reading "Jeanne Shaheen". The signature is fluid and cursive, with the first name "Jeanne" and last name "Shaheen" clearly distinguishable.

Jeanne Shaheen  
Lead Governor for Energy

Enclosure

cc: Joe Keillher

## POLICY STATEMENT: COMPETITION IN ELECTRICITY MARKETS

The electric industry has been restructured in the Northeast, opening the way for competition for both generation and energy services. Most Northeast states have implemented legislative and regulatory actions to increase customer choice and reduce the region's historically high electricity costs. The Northeast is in the vanguard of efforts to create competitive retail electricity markets. Competitive wholesale markets are being established throughout the region. At the same time, individual state actions to bring choice of electricity suppliers to their businesses and citizens lay the foundation for competitive and retail markets. These developments to open the electric industry to competition is the beginning of the creation of truly competitive markets.

The Administration and the Congress are expected to address restructuring of the electric system in the 106th Congress. Federal legislation must be carefully drafted if it is to advance retail choice. Legislation which imposes rigid Federal mandates could set-back the substantial progress already underway in states and various regional electricity markets, and also reduce the flexibility which states need to create viable marketplaces. Federal restructuring legislation should not preempt restructuring programs and plans already adopted by the states.

Federal legislation can advance the development of a competitive marketplace for electricity by enabling state efforts in a number of areas. The Coalition of Northeastern Governors (CONEG) urges the Congress and Administration to work closely with the states on these matters.

- **In the changing environment for electricity, federal legislative action could clarify the jurisdictional relationship of federal regulatory and state legislative/regulatory authority and reduce judicial questions.** Federal legislation should make unambiguous State jurisdiction over the distribution and retail sale of electricity and affirm the States' right to: apply distribution charges, access charges or other mechanisms deemed appropriate by the State; order wheeling for retail sales; and determine the appropriate recovery mechanisms for costs stranded through retail competition. State jurisdiction should also include access to the generation profile, books and records for any company generating or selling electricity in the State.
- **Reliability throughout the system remains of the utmost concern to the Northeast Governors.** The federal government and the states must act as partners to provide leadership and oversight in developing an appropriate mechanism to ensure adequate reliability standards and enforcement for the transmission system, with any national standards enforced by a national reliability organization set by the organization itself, not the FERC or Congress.

States must maintain authority over the reliability of local distribution systems. Since states are in the best position to use their knowledge of local or regional reliability concerns, any federal legislation must retain states' right to set additional standards appropriate to their bulk power systems.

- **Emergence of fair and equitable competitive markets requires the identification and mitigation of market power abuses.** The challenge lies in balancing the need to prevent and mitigate market power abuses without imposing federal dictates which might hinder the market's development and innovation. Federal legislation should allow states to continue their constructive work with FERC to craft mitigation strategies where potential market power problems are perceived. States must also retain authority over market power at the distribution and retail level, as well as full authority for siting of facilities.
- **Disclosure is essential for both informed consumers and effective market operations. It will allow consumers to choose more environmentally benign fuel sources, such as renewables.** Any federal action should encourage consistent standards for disclosure, but a federal mandate for uniform standards or a specific reporting format is not needed at this early stage of market development. States and markets should be given adequate time to cooperate in developing consistent disclosure requirements.
- **States' authority to mitigate stranded costs, as well as provide for recovery mechanisms in state restructuring programs, must not be preempted by federal legislation.** All CONEG states that have restructuring plans in place provide for recovery; and in several states, generation assets are being divested. Any federal legislation should reaffirm the states' right to calculate and determine the appropriate recovery mechanism for stranded costs including non-bypassable charges to generate monies for recovery.
- **Renewable energy offers many public benefits and contributes to the diversification of fuels.** The Northeast states, in their restructuring programs, have embraced a variety of means to encourage renewable energy in the fuel mix. The federal government should maintain its presence in research and development for renewable energy. Any federal legislation should recognize states' authority to incorporate renewable energy into state restructuring plans, encourage state action to support renewable energy, and clarify states' authority over net metering programs.
- **Public benefits programs remain an important tool of public policy in a restructured electric industry.** The Northeast states' restructuring programs incorporate a variety of public benefits programs and funding approaches — each appropriate to a state's particular situation and public policy objectives. While a national public benefits trust fund is one means for the federal government to encourage or enhance state-designed and implemented programs, such a federal fund should not preempt states' authority to design or set the appropriate funding level for such programs. Any federal restructuring legislation must reaffirm, protect and respect the states' authority to provide the particular package of public benefits programs that it determines appropriate, including the right to impose non-bypassable charges to fund public benefits programs.
- **Independent control of transmission operations and planning is important for the emergence of accessible and competitive markets.** The CONEG states are well underway in the process of converting their long-established power pools into FERC-approved ISOs. Any federal legislation must respect this process and the resulting ISOs. Regional entities should

adopt a broad perspective when developing plans in an open market environment, but such planning and related siting should not be federalized.

- **Timely, meaningful and credible information about changes underway in industry and their impacts is essential if both the emerging market and policy makers are to understand, assess, and adapt effectively.** CONEG welcomes the recent Administrative initiative to track and report on industry-wide emissions and resource generation data. The Governors urge the Administration to act promptly to meet a similar need for timely and ongoing information on the impact of wholesale and retail competition on the electric industry in such areas as industry structure, price, consumption and demand, reliability, efficiency and renewable programs, and research and development.
- **Competition in the electric industry must coexist with environmental quality goals.** The adoption of equitable and comparable environmental emissions provisions applied evenhandedly to all market participants is an important foundation for effective and successful competition in electric markets.

The development of a market-based emissions-trading or "cap and trade" system for utilities will allow industries greater flexibility in choosing appropriate and cost-effective pollution control measures. Any national restructuring legislation should provide EPA with clear legal authority to require such an interstate trading system for NO<sub>x</sub>. Control measures taken by generators to reduce ozone-related emissions can be taken without jeopardizing reliability when they are designed and implemented in a well-planned and efficient manner. To ensure maximum cost effectiveness, such measures should be coordinated with EPA programs designed to address other pollutants produced by electricity generators.

The CONEG Governors stand ready to share our states' insights and experiences with electricity restructuring to ensure that any national legislation enhances and reinforces the substantial progress of the Northeast states in creating competitive electricity markets.

Adopted: February 23, 1999